

FILED
LODGED
6/29/99
ENTERED
RECEIVED

JUN 29 1999

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BINH PHAN,

SON THAI HUYNH,

DENNIS VLADIMIROVICH
BATYUCHENKO,

KHAMSEANE SIVONGXAY, and

KIM HO MA,

Petitioners,

v.

JANET RENO, United States Attorney
General; UNITED STATES
IMMIGRATION AND
NATURALIZATION SERVICE; and
RICHARD C. SMITH, Seattle INS District
Director,

Respondents.

CASE NOS. C98-234Z

C99-177C

C99-185R

C99-341WD

C99-151L

C99-814C

SUPPLEMENTAL ORDER STAYING
RELATED CASES

On April 22, 1999, the Court issued an "Order on Lead Cases, and Stay of Related Cases" setting forth procedures which will be employed to manage a large number of habeas corpus petitions filed on behalf of persons currently detained for an indefinite period under authority of the Immigration and Naturalization Service ("INS"). That Order identified all cases, filed as of that date, which were known to raise the common issues related to indefinite INS detention.

1 Since the issuance of that Order, additional cases raising the same common issues have
2 been identified. A list of these cases is attached as Appendix B to this Order. In Order to
3 ensure conformity of treatment, all cases identified in Appendix B will be governed by the
4 provisions of the Court's April 22, 1999 Order. Accordingly, all cases identified in Appendix
5 B are STAYED.

6 The Clerk shall direct copies of this Order and of the Court's "Order on Lead Cases, and
7 Stay of Related Cases" to all petitioners in cases listed in Appendix B (making such service
8 upon counsel for all petitioners who are represented); to the United States Attorney; to each
9 United States District Judge; and to each United States Magistrate Judge.

10 DATED this 29 day of June, 1999.

11
12 
13 JOHN C. COUGHENOUR
14 Chief United States District Judge

15 Recommended for entry this
16 25 day of June, 1999.

17 
18 JOHN L. WEINBERG
19 United States Magistrate Judge

APPENDIX B

Case Number	Case Name
C99-112Z	Federov v. Smith
C99-193L	Soulivong v. INS
C99-222C	Nguyen v. INS
C99-350L	Negash v. INS
C99-494Z	Lich v. Smith
C99-609C	Ngu v. INS
C99-640R	Keovongphet v. INS
C99-635Z	Tran v. INS
C99-636R	Huynh Nguyen v. INS
C99-637Z	Nghia Nguyen v. INS
C99-638WD	Ngoc v. INS
C99-639C	Anh v. INS
C99-667R	Hoang Nguyen v. INS
C99-672Z	Yim v. INS
C99-673Z	Srimenagsam v. INS
C99-666Z	Mokthar v. INS
C99-669WD	Vilayphonh v. INS
C99-670WD	Pham v. INS
C99-671R	Saly v. INS
C99-719C	Bin v. INS
C99-718C	Le v. INS
C99-720C	Mekavong v. INS
C99-721R	Khin v. INS
C99-775C	Duong v. INS
C99-811Z	Som v. INS
C99-812Z	Minh Nguyen v. INS
C99-813L	Nam Nguyen v. INS
C99-814C	Tran v. INS

Case Number	Case Name
C99-815L	Ma v. INS
C99-826WD	Moeun v. INS
C99-833WD	Thornig v. INS
C99-834Z	Thamala v. INS
C99-842WD	Verdecia v. INS
C99-843C	Cheng v. INS
C99-844WD	Atkins v. INS
C99-892R	Bao v. INS
C99-893C	Tuan v. INS
C99-910WD	Tran v. INS
C99-930R	Duong v. INS
C99-952R	Shakvaladyan v. INS
C99-953R	Suarez-Prendez v. INS
C99-954R	Hoang v. INS
C99-955Z	Tsavoukyan v. INS
C99-967C	Minh v. INS
C99-968L	Amanuel v. INS
C99-969WD	Wattar v. INS
C99-978L	Abdi v. INS
C99-988C	Chinye v. INS
C99-1005L	Sahle v. INS
C99-1046R	Ngo v. INS

FILED ENTERED
LODGED RECEIVED
APR 22 1999 PM
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BINH PHAN,
SON THAI HUYNH,
DENNIS VLADIMIROVICH
BATYUCHENKO,
KHAMSEANE SIVONGXAY, and
KIM HO MA,
Petitioners,

CASE NOS. C98-234Z
C99-177C
C99-185R
C99-341WD
C99-151L

v.

JANET RENO, United States Attorney
General; UNITED STATES
IMMIGRATION AND
NATURALIZATION SERVICE; and
RICHARD C. SMITH, Seattle INS District
Director,

ORDER ON LEAD CASES, AND STAY
OF RELATED CASES

Respondents.

1. General Provisions

Currently pending before this court are over 50 habeas corpus petitions, filed on behalf of persons currently detained for an indefinite period under authority of the Immigration and Naturalization Service. A list of these cases is attached as Appendix A to this order. These petitions present a number of common issues, including the constitutionality of such detention.

1 These cases are presently assigned to five different United States District Judges of this
2 court. Each Judge will individually resolve the cases pending before him or her. But the court
3 believes it will be beneficial if the common issues in these cases can be briefed and argued
4 together, affording the five District Judges the opportunity to confer as to those issues before
5 making rulings.

6 Given the fact that the petitioners are in custody, and are likely to remain so for an
7 indefinite period, the court also seeks to expedite decision in these cases as fully as possible,
8 consistent with fair opportunities for the parties to present the issue, and for the court to
9 consider and resolve them appropriately.

10 The procedures described in the balance of this Order are intended to promote these
11 objectives.

12 2. Designation of Five "Lead Cases"

13 The court has selected five cases to serve as "lead cases." Each case is assigned to a
14 different United States District Judge. The five cases are:

15 Sivongxay v. INS, C99-341WD

16 Huynh v. INS, C99-177C

17 (This case has been re-assigned from the Hon. Thomas S. Zilly to the Hon. John
18 C. Coughenour, Chief Judge. The court defers briefing, argument and decision on
19 any claim by petitioner Huynh that he is a citizen of the United States.)

20 Batyuchenko v. INS, C99-185R

21 Phan v. Smith, C98-234Z

22 Ma v. INS, C99-151L

23 (This case has been re-assigned from the Hon. William L. Dwyer to the Hon.
24 Robert S. Lasnik.)

25 Orders of Reference in these five cases to the United States Magistrate Judges are hereby
26 vacated.

3. Briefing in Lead Cases

Briefing in the lead cases shall conform to the schedule set forth in this paragraph. Briefs by counsel for the parties in those five cases shall address *all issues* in those cases.

(A) Counsel for the petitioners in the lead cases shall file and serve their opening memoranda, and any supporting material, not later than April 30, 1999. The total length of the memoranda and supporting materials submitted by a given counsel shall not exceed 50 pages. The Federal Public Defender shall provide copies of those materials to counsel for all petitioners in cases which appear in Appendix A but which have not been designated as lead cases.

(B) Counsel for any petitioner in a case which appears in Appendix A but which has not been designated as a lead case, may file and serve supplemental memoranda not later than May 10, 1999. Counsel should file such memoranda only after reviewing the memoranda and other materials filed by counsel in the lead cases. Such memoranda shall not exceed 25 pages in length; shall *address only the Common Issues* listed in paragraph 4 below; and shall not duplicate arguments and authorities already presented by counsel in the lead cases.

(C) Respondents shall file and serve their response not later than May 21, 1999. This response shall not exceed a total of 50 pages in length.

(D) Counsel for petitioners in the lead cases shall file and serve any reply not later than May 28, 1999. Such replies shall not exceed 25 pages in length.

All memoranda and supporting materials filed in the lead cases shall bear the same caption as appears on this Order. Counsel shall file with the Clerk an original and nine (9) copies of all memoranda and supporting materials. The Clerk is directed to file one copy in each court file, and provide one chambers copy to each United States District Judge.

4. Creation of "Panel," Oral Argument and Decision of Lead Cases

By this Order, the court creates a Panel of the court to consider the memoranda of the parties and to hear oral argument in the lead cases. The Panel shall consist of the Hon. John C. Coughenour, Chief Judge; the Hon. Barbara Jacobs Rothstein; the Hon. Thomas S. Zilly; the Hon. Robert S. Lasnik; and the Hon. William L. Dwyer.

Oral argument will be limited to the following four "Common Issues":

- (A) Jurisdiction of the court to entertain habeas petitions;
- (B) Necessity for Exhaustion of Administrative Remedies;
- (C) Constitutionality of INS Detention for Indefinite Period; and
- (D) Special Issues Presented by the Fact that a Case is Governed by Former Immigration Statutes, by Transitional Rules, or by New Immigration Statutes.

Oral argument shall not exceed three (3) hours total, to be divided equally between petitioners and respondent. Counsel for petitioners shall agree on a division between them of their allotted time. Oral argument will be conducted on June 17, 1999, starting at 1:30 p.m. in the courtroom of Chief Judge Coughenour, Sixth Floor of the United States Courthouse in Seattle.

As soon as possible after oral argument, the United States District Judge to whom a lead case is assigned shall enter a final decision in that case, if possible, or resolve as many issues as possible and order appropriate further proceedings. Copies of that Judge's order shall be provided to all other petitioners whose cases are pending before that Judge (through their counsel, where applicable).

5. Stay of Cases Other than Lead Cases

All cases listed in Appendix A, except for the five cases identified in this Order as lead cases, are hereby STAYED, for all purposes, except that the court will, as necessary:

- (a) Rule upon applications for leave to proceed *in forma pauperis*;
- (b) Determine whether to order service of process;
- (c) Rule upon applications for the appointment of counsel; and
- (d) Enter any stipulated orders of dismissal.


The court will extend this stay order to all other cases which present some or all of the Common Issues, whether such case is presently pending or is filed after the date of this Order.


Once a United States District Judge enters an order in a lead case, resolving all the issues in that case or as many issues as possible, it is expected that the Judge will vacate the stay in the other cases assigned to that Judge. Petitioners in those cases (through their counsel, where represented) will have a full opportunity to present all relevant facts and other circumstances of that case, and to present their arguments as to the results compelled by those facts. Each case will be resolved as promptly as possible on its merits by the United States District Judge to whom it is assigned.

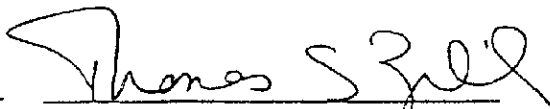
6. Service of This Order

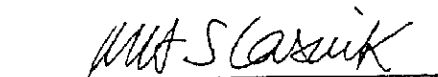
The Clerk shall direct copies of this Order to all petitioners in cases listed in Appendix A (making such service upon counsel for all petitioners who are represented); to the United States Attorney; to each United States District Judge; and to each United States Magistrate Judge.

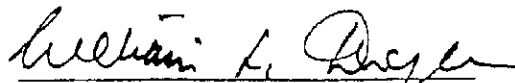
DATED this 22nd day of April, 1999.


JOHN C. COUGHENOUR
Chief United States District Judge


BARBARA JACOBS ROTHSTEIN
United States District Judge


THOMAS S. ZILLY
United States District Judge


ROBERT S. LASNIK
United States District Judge


WILLIAM L. DWYER
United States District Judge